



* IN THE HIGH COURT OF DELHI
 + ITA No.656/2004
 % DECIDED ON : November 22, 2004.

Commissioner of Income Tax..... Appellant.

Through Mr. Prem Lata Bansal with Mr. Ajay Jha,
 Advocates.

Versus

Ballabgarh Refractories Ltd.....Respondent

Through: Nemo

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE BADAR DURREZ AHMED

1. Whether the Reporters of Local Papers may be allowed to see the judgment
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

B.C.PATEL, C.J. (ORAL)

1. Before the Tribunal the question framed was as under:-

"On the facts and in the circumstances of the case the CIT(A) has erred in deleting the addition of Rs.10,93,465/- out of a total disallowance of Rs.17,00,252/- on account of depreciation claimed despite the fact that the A.O. had established through detailed investigation that the transaction involving transfer of assets (on which depreciation was claimed) between the holding company and the assessee (subsidiary company) was collusive?"

2. The Tribunal on appreciation of material placed before it



arrived at a conclusion as under:-

"Taking into consideration, the entire circumstances, the irresistible conclusion on which we arrive is that the ownership of the machinery under consideration vested with the assessee. The approach with which the assessing officer has proceeded is merely a result of his suspicion and these were surmises and conjectures in the formation of opinion by the Assessing Officer. Thus the plea of collusion remains merely an allegation and has not been proved by the Revenue. The onus that lay upon the Revenue in this respect has also not been discharged. The Apex Court in Uma Charan Shaw v. CIT 37 ITR 271(SC) has held that the conclusion which is the result of suspicion cannot take place of proof. Keeping this principle in mind as well as the entire facts and circumstances, no error is found in the conclusion arrived at by the Id.CIT(A) for allowing depreciation for use of machinery at Rs.10,93,465/- for use of machinery owned by it for a period of less than 182 days. There being no substance in the ground of Revenue, the same stands rejected.'

3. Thus, the Tribunal, inter alia, held that collusion was not proved. The issue in this appeal is one purely of facts. No substantial question of law arises and hence the appeal is dismissed.

Badar
CHIEF JUSTICE

Badar Durrez Ahmed
BADAR DURREZ AHMED, J.

November 22, 2004
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